

Exhibit 9

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Counterclaimant Battens Plus, Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DIVERSI-PLAST PRODUCTS, INC., a
Minnesota Corporation,

Plaintiff,

v.

BATTENS PLUS, INC., a California
Corporation,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 2:04CV01005 PGC

BATTENS PLUS, INC.'S RESPONSES
TO PLAINTIFF'S THIRD SET OF
REQUESTS FOR ADMISSIONS (NOS.
31 TO 93)

GENERAL OBJECTIONS

Battens Plus objects to each Request that utilizes terms appearing in the '193 Patent claims as such terms have not been construed by the Court. To the extent Battens Plus admits any Request, it does not admit that any claim or term in the patent in suit could be construed to cover or describe Battens Plus' BattenUp product. Battens Plus also objects to the use of the term "underlayment" in several requests. Claim 2, the only claim of the '193 Patent that Diversi-Plast asserts is infringed by the BattenUp batten, incorporates the term "overlayment" from Claim 1. The relationship between the term "underlayment" and "overlayment" is unclear and the latter term has not been construed by the Court. To the extent Battens Plus admits any request, it does not admit that an "overlayment" is the same as an "underlayment." Battens Plus incorporates these General Objections into each of the Responses herein.

REQUEST FOR ADMISSION NO. 31:

Admit that the Accused Products are advertised to be installed or placed between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Admitted.

REQUEST FOR ADMISSION NO. 32:

Admit that you instruct purchasers of the Accused Products to install or place the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Admitted.

REQUEST FOR ADMISSION NO. 33:

Admit that you intend for users of the Accused Products to install or place the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Denied.

REQUEST FOR ADMISSION NO. 34:

Admit that you are aware that users of the Accused Products have installed or placed the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Battens Plus objects to this Request as it is vague and ambiguous as to time, as to the meaning of the term "underlayment," as to whether such installation or placement was for experimental or business use and as to whether such an installation or placement was on a roof. Because of these ambiguities, Battens Plus' answer to this Request can have no application to issues relevant in this case.

Subject to the General Objections and this specific objection Battens Plus; admitted.

REQUEST FOR ADMISSION NO. 35:

Admit that you have installed or placed the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Battens Plus objects to this Request as it is vague and ambiguous as to time, as to the meaning of the term "underlayment," as to whether such installation or placement was for experimental or business use and as to whether such an installation or placement was on a roof. Because of these ambiguities, Battens Plus' answer to this Request can have no application to issues relevant in this case.

Subject to the General Objections and this specific objection, Battens Plus admits and further states that it does not install its BattenUP batten in the course of its ordinary business.

REQUEST FOR ADMISSION NO. 36:

Admit that Ramtech Laboratories, Inc. installed or placed the Accused Products between concrete tiles and an underlayment as part of a roof fire test in February of 2003.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Admitted.

REQUEST FOR ADMISSION NO. 37:

Admit that you requested that Ramtech Laboratories, Inc. install or place the Accused Products between concrete tiles and an underlayment as part of a roof fire test in February of 2003.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Admitted.

REQUEST FOR ADMISSION NO. 38:

Admit that after you became aware of the '193 Patent you advertised that the Accused Products are to be installed or placed between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Admitted.

REQUEST FOR ADMISSION NO. 39:

Admit that after you became aware of the '193 Patent you instructed users of the Accused Products that the Accused Products are to be installed or placed between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Admitted.

REQUEST FOR ADMISSION NO. 40:

Admit that the Accused Products have been installed or placed between roof tiles and an underlayment after you became aware of the '193 Patent

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Admitted.

REQUEST FOR ADMISSION NO. 41:

Admit that the Accused Products are advertised to be installed or placed between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Admitted.

REQUEST FOR ADMISSION NO. 42:

Admit that you instruct purchasers of the Accused Products to install or place the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Admitted.

REQUEST FOR ADMISSION NO. 43:

Admit that you intend for users of the Accused Products to install or place the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Denied.

REQUEST FOR ADMISSION NO. 44:

Admit that users of the Accused Products have installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Admitted.

REQUEST FOR ADMISSION NO. 45:

Admit that you have installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Battens Plus objects to this Request as it is vague and ambiguous as to time, as to whether such installation or placement was for experimental or business use and as to whether such an installation or placement was on a roof. Because of these ambiguities, Battens Plus' answer to this Request can have no application to issues relevant in this case.

Subject to the General Objections and this specific objection, Battens Plus admits and further states that it does not install its BattenUP batten in the course of its ordinary business.

REQUEST FOR ADMISSION NO. 46:

Admit that Ramtech Laboratories, Inc. installed or placed the Accused Products between concrete tiles and roofing felt as part of a roof fire test in February of 2003.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

Admitted.

REQUEST FOR ADMISSION NO. 47:

Admit that you requested that Ramtech Laboratories, Inc. install or place the Accused Products between concrete tiles and roofing felt as part of a roof fire test in February of 2003.

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Admitted.

REQUEST FOR ADMISSION NO. 48:

Admit that after you became aware of the '193 Patent you advertised that the Accused Products are to be installed or placed between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

Admitted.

REQUEST FOR ADMISSION NO. 49:

Admit that after you became aware of the '193 Patent you instructed users of the Accused Products that the Accused Products are to be installed or placed between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

Admitted.

REQUEST FOR ADMISSION NO. 50:

Admit that the Accused Products have been installed or placed between roof tiles and roofing felt after you became aware of the '193 Patent

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

Admitted.

REQUEST FOR ADMISSION NO. 51:

Admit that Inteplast Group, Ltd. manufactures the Accused Products at your request or instruction.

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

Admitted.

REQUEST FOR ADMISSION NO. 52:

Admit that Elliott Homes has used the Accused Products in its installation of tile roofing systems.

RESPONSE TO REQUEST FOR ADMISSION NO. 52:

Admitted.

REQUEST FOR ADMISSION NO. 53:

Admit that Elliott Homes has installed or placed the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 53:

Admitted.

REQUEST FOR ADMISSION NO. 54:

Admit that Elliott Homes has installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 54:

Admitted.

REQUEST FOR ADMISSION NO. 55:

Admit that Reynen & Bardis Communities has used the Accused Products in its installation of tile roofing systems.

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

Admitted.

REQUEST FOR ADMISSION NO. 56:

Admit that Reynen & Bardis Communities has installed or placed the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Admitted.

REQUEST FOR ADMISSION NO. 57:

Admit that Reynen & Bardis Communities has installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

Admitted.

REQUEST FOR ADMISSION NO. 58:

Admit that D.R. Horton, Inc. has used the Accused Products in its installation of roofing systems.

RESPONSE TO REQUEST FOR ADMISSION NO. 58:

Admitted.

REQUEST FOR ADMISSION NO. 59:

Admit that D.R. Horton, Inc. has installed or placed the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 59:

Admitted.

REQUEST FOR ADMISSION NO. 60:

Admit that D.R. Horton, Inc. has installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 60:

Admitted.

REQUEST FOR ADMISSION NO. 61:

Admit that Corinthian Homes has used the Accused Products in its installation of tile roofing systems.

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Admitted.

REQUEST FOR ADMISSION NO. 62:

Admit that Corinthian Homes has installed or placed the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Admitted.

REQUEST FOR ADMISSION NO. 63:

Admit that Corinthian Homes has installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Admitted.

REQUEST FOR ADMISSION NO. 64:

Admit that you do not sell the Accused Products for any use other than installation between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Denied.

REQUEST FOR ADMISSION NO. 65:

Admit that you do not sell the Accused Products for any use other than installation between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Denied.

REQUEST FOR ADMISSION NO. 66:

Admit that you do not intend that the Accused Products be used in any way other than installation between roof tiles and an underlayment or roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

Denied.

REQUEST FOR ADMISSION NO. 67:

Admit that you do not have knowledge of the Accused Products being used in any way other than installation between roof tiles and an underlayment or roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 67:

Denied.

REQUEST FOR ADMISSION NO. 68:

Admit that the Accused Products comprise a pair of spaced parallel skins.

RESPONSE TO REQUEST FOR ADMISSION NO. 68:

Denied.

REQUEST FOR ADMISSION NO. 69:

Admit that the Accused Products comprise a series of spaced parallel struts.

RESPONSE TO REQUEST FOR ADMISSION NO. 69:

Denied.

REQUEST FOR ADMISSION NO. 70:

Admit that the Accused Products comprise a series of spaced parallel struts disposed to a pair of spaced parallel skins.

RESPONSE TO REQUEST FOR ADMISSION NO. 70:

Denied.

REQUEST FOR ADMISSION NO. 71:

Admit that the Accused Products comprise spaced, generally parallel upper and lower surfaces with a series of struts connecting the upper and lower surfaces.

RESPONSE TO REQUEST FOR ADMISSION NO. 71:

Denied.

REQUEST FOR ADMISSION NO. 72:

Admit that the Accused Products comprise top and bottom flanges.

RESPONSE TO REQUEST FOR ADMISSION NO. 72:

Denied.

REQUEST FOR ADMISSION NO. 73:

Admit that the Accused Products comprise vertical stiffeners.

RESPONSE TO REQUEST FOR ADMISSION NO. 73:

Denied.

REQUEST FOR ADMISSION NO. 74:

Admit that the Accused Products comprise openings formed between the vertical stiffeners and between the top and bottom surfaces of the battens.

RESPONSE TO REQUEST FOR ADMISSION NO. 74:

Denied.

REQUEST FOR ADMISSION NO. 75:

Admit that you believe the claims of U.S. Patent Application No. 10/386,977, as originally filed, read on the Accused Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 75:

Denied.

REQUEST FOR ADMISSION NO. 76:

Admit that you believe the claims of U.S. Patent Application No. 10/830,821, as originally filed, read on the Accused Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 76:

Denied.

REQUEST FOR ADMISSION NO. 77:

Admit that the term "Patent Pending" found on your website, <http://www.battensplus.com/Main.html>, on January 12, 2006 is directly or indirectly referring to U.S. Patent Application No. 10/386,977.

RESPONSE TO REQUEST FOR ADMISSION NO. 77:

Admitted.

REQUEST FOR ADMISSION NO. 78:

Admit that the term "Patent Pending" found on your website, <http://www.battensplus.com/Main.html>, on January 12, 2006 is directly or indirectly referring to U.S. Patent Application No. 10/830,821.

RESPONSE TO REQUEST FOR ADMISSION NO. 78:

Admitted.

REQUEST FOR ADMISSION NO. 79:

Admit that a finding by the court for the present case that the Accused Products infringe the '193 Patent means that Diversi-Plast has the right to exclude Battens Plus from selling the Accused Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 79:

Denied.

REQUEST FOR ADMISSION NO. 80:

Admit that U.S. Patent No. 5,304,095 does not disclose or claim a tile roof system.

RESPONSE TO REQUEST FOR ADMISSION NO. 80:

Denied.

REQUEST FOR ADMISSION NO. 81:

Admit the genuineness and authenticity of all documents, writings, photographs, and recordings produced by you in response to discovery requests or disclosure requirements which bear your Bates numbers and which were generated or kept by you in the ordinary course of business.

RESPONSE TO REQUEST FOR ADMISSION NO. 81:

Battens Plus objects that this request attempts to combine hundreds of subparts into a single request in violation of the Federal Rules of Civil Procedure and this Court's Scheduling Order limiting the number of requests for admission to one hundred. As such, this request is overly burdensome and Battens Plus will not answer it.

REQUEST FOR ADMISSION NO. 82:

Admit that copies and duplicates of all documents, writings, photographs, and recordings, including summaries, produced by you in response to discovery requests or disclosure requirements which bear your Bates numbers and which were documents generated by you or kept by you in the ordinary course of business, and are true copies of original documents from your files.

RESPONSE TO REQUEST FOR ADMISSION NO. 82:

Battens Plus incorporates herein its response to Request For Admission No. 81.

REQUEST FOR ADMISSION NO. 83:

Admit that United States patent No. 6,357,193 is owned by Diversi-Plast Products, Inc.

RESPONSE TO REQUEST FOR ADMISSION NO. 83:

Denied.

REQUEST FOR ADMISSION NO. 84:

Admit that the Accused Products were first sold after March 19, 2002.

RESPONSE TO REQUEST FOR ADMISSION NO. 84:

Admitted.

REQUEST FOR ADMISSION NO. 85:

Admit that Hunter Homes has used the Accused Products in its installation of tile roofing systems.

RESPONSE TO REQUEST FOR ADMISSION NO. 85:

Admitted.

REQUEST FOR ADMISSION NO. 86:

Admit that Hunter Homes has used the Accused Products in its installation of tile roofing systems.

RESPONSE TO REQUEST FOR ADMISSION NO. 86:

Admitted.

REQUEST FOR ADMISSION NO. 87:

Admit that Hunter Homes has installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 87:

Admitted.

REQUEST FOR ADMISSION NO. 88:

Admit that Westwood Homes has used the Accused Products in its installation of tile roofing systems.

RESPONSE TO REQUEST FOR ADMISSION NO. 88:

Admitted.

REQUEST FOR ADMISSION NO. 89:

Admit that Westwood Homes has installed or placed the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 89:

Admitted.

REQUEST FOR ADMISSION NO. 90:

Admit that Westwood Homes has installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 90:

Admitted.

REQUEST FOR ADMISSION NO. 91:

Admit that Sycamore Homes has used the Accused Products in its installation of tile roofing systems.

RESPONSE TO REQUEST FOR ADMISSION NO. 91:

Admitted.

REQUEST FOR ADMISSION NO. 92:

Admit that Sycamore Homes has installed or placed the Accused Products between roof tiles and an underlayment.

RESPONSE TO REQUEST FOR ADMISSION NO. 92:

Admitted.

REQUEST FOR ADMISSION NO. 93:

Admit that Sycamore Homes has installed or placed the Accused Products between roof tiles and roofing felt.

RESPONSE TO REQUEST FOR ADMISSION NO. 93:

Admitted.

DATED: February 16, 2006

McDONOUGH HOLLAND & ALLEN PC
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By: 

MICHAEL S. WILCOX

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Battens Plus, Inc.